

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION SIX**

ALL SAFE DOCUMENT DESTRUCTION
SERVICE, INC.¹

Employer

and

Case 6-RC-11904

GENERAL TEAMSTERS, CHAUFFEURS AND
HELPERS, LOCAL UNION NO. 249 a/w
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, AFL-CIO

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before Patricia J. Daum, a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to the undersigned Regional Director.²

Upon the entire record³ in this case, the Regional Director finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

¹ The name of the Employer appears as amended at the hearing.

² Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by January 2, 2001.

³ The Employer filed a timely brief in this matter which has been duly considered by the undersigned.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

The Petitioner seeks to represent a unit consisting of all full-time and regular part-time drivers, warehousemen and working foremen employed by the Employer at its Wilmerding, Pennsylvania, facility; excluding all office clerical employees and guards, professional employees and supervisors as defined in the Act. While the parties are otherwise in agreement as to the scope and composition of the unit, the Employer contends, contrary to the Petitioner, that Jason Yaklich and Chris Hoagland cannot be included in the unit as working foremen, but rather must be excluded from the petitioned-for unit in that they are supervisors as defined in the Act. There are approximately 24 employees in the petitioned-for unit, which number includes the two individuals whose supervisory status is in dispute. There is no history of collective bargaining for any of the employees involved herein.

The Employer is a Pennsylvania corporation engaged in the collection and destruction of documents from banks and other corporate clients, and in the subsequent recycling of the paper generated thereby. The Employer has its administrative offices located in Monroeville, Pennsylvania, and a warehouse facility located in Wilmerding, Pennsylvania, which is the location solely involved herein. The Employer is owned by Cherie Bartel, who also manages the business. Reporting to Cherie Bartel is Jon Bartel, who serves as the Operations Manager and Controller.⁴ Acting as a consultant to the Employer is John Bartel.⁵

⁴ Jon Bartel is the step-son of Cherie Bartel.

⁵ John Bartel is the husband of Cherie Bartel.

The warehouse facility is approximately 30,000 square feet, and includes a breakroom and an office for Jon Bartel.⁶ The Employer operates weekdays in two shifts: a daylight shift from 8 a.m. to 5 p.m. and a night shift from 11:30 p.m. to 8 a.m.⁷ On the daylight shift, there are three warehouse employees who report to Jason Yaklich and ten drivers who report to Jon Bartel, and then after completing their runs, may be assigned by Bartel to report to Yaklich in the warehouse. Also working on the daylight shift are warehouse employees Floyd Cheslock, Dean Allenbaugh and three other warehouse employees engaged in specialized tasks, who report directly to Cherie Bartel and whose status is not at issue herein. Cheslock is responsible for operating the shredder and maintaining the equipment. Allenbaugh handles the receiving functions. On the night shift, there is one warehouse employee reporting to Chris Hoagland, and two drivers who also report to Hoagland after completing their runs.

Yaklich and Hoagland are designated by the Employer as supervisors on their respective crews. In addition, Cheslock is designated by the Employer as a supervisor and Allenbaugh is designated as assistant supervisor reporting to Yaklich. Nevertheless, the Employer does not contend that either Cheslock or Allenbaugh possess any of the indicia of supervisory authority under Section 2(11) of the Act, and does not dispute the inclusion of Cheslock or Allenbaugh in the petitioned-for unit.

Yaklich is one of the Employer's most senior employees⁸ and, as noted, the day crew consists of Yaklich, three other warehouse employees and the drivers as they finish their runs. Yaklich estimated that the number of employees on his crew may vary from three to eight.

Among the jobs performed by the warehouse crew are unloading trucks, driving fork trucks and sorting paper. The warehouse work requires no specialized training, and Yaklich and

⁶ Cherie Bartel usually works at the Monroeville location.

⁷ The only business conducted on weekends is the pick-up of documents from one customer.

⁸ There are only two employees, both drivers, who have greater seniority than Yaklich.

Allenbaugh provide on-the-job training for day shift employees.⁹ At the beginning of the shift, Yaklich assigns various tasks to the crew, and during the day, Yaklich will assign tasks to the drivers who report to the warehouse and, as needed in order to maximize productivity, reassign tasks to crew members. Yaklich makes these assignments based on his personal observation of the ability of the crew members to perform the different jobs. Yaklich spends the vast majority of his work day performing hands-on production work, and he estimates that he spends only about 15 minutes assigning tasks in the morning and about an additional 30 minutes assigning tasks throughout the day.

Jon Bartel is present in the warehouse facility about six hours a day. During that time, Bartel assigns runs to the drivers, repairs equipment, builds mobile shred units and repairs shredders from customers. When Jon Bartel is going to be absent from work, he prepares a rough schedule of the routes so that Yaklich can assign the runs to the drivers in his absence. Yaklich then follows Bartel's rough schedule, making such changes as are necessary.

The night crew consists of Hoagland, one other warehouse employee and two drivers. At the beginning of the shift, Hoagland assigns tasks to the other employee, and when the drivers finish their runs about midway through the shift and return to the facility, Hoagland will assign them tasks as well.¹⁰ If Hoagland is not immediately available, the other warehouse employee tells the drivers what jobs to do. Like Yaklich, Hoagland spends the overwhelming majority of his work time performing hands-on production work and spends only about 15 minutes making such assignments. If a problem occurs while the drivers are out on the road, the drivers contact Hoagland who routinely refers them to Cherie or Jon Bartel.

Neither Yaklich nor Hoagland independently authorize overtime or mandate employees to work overtime; rather, Jon Bartel authorizes overtime and Yaklich then offers it to employees on a voluntary basis. Yaklich does not handle employee call-offs and requests to leave early on

⁹ Hoagland provides training for night shift employees.

¹⁰ Hoagland described these tasks as "tipping or running the belt or doing the garbage."

the day shift; instead, these matters are handled by Jon Bartel. On the night shift, employees call off to Hoagland, and Hoagland handles requests by a warehouse employee to leave early, but Jon Bartel handles such requests made by drivers. Yaklich does not approve or correct timecards on a regular basis; rather, if there is a timeclock error, the employee makes the correction on his timecard. Yaklich is only involved if he happens to witness the error, in which case, he will initial the timecard to confirm that there was an error.

With respect to hiring, neither Yaklich nor Hoagland have participated in the hiring process on a regular basis. Thus, Yaklich testified that he has participated in the hiring process on only one occasion, and on that occasion, Cheslock, whose inclusion in the unit is not disputed, was also a participant. Specifically, Yaklich testified that about a year ago, he and Cheslock participated in the interviewing of two applicants for a position, along with the Cherie, John and Jon Bartel. Yaklich stated that after interviewing the two applicants, the group discussed them and reached a consensus as to which applicant would be offered the position. Yaklich further testified that although there have been many other employees hired since then, he has not been asked to participate in another interview. Hoagland testified that he has not participated in any interviews.¹¹

As to the evaluation of employee performance, Yaklich and Hoagland do not complete formal written evaluations. However, Yaklich and Hoagland have been asked to comment on the performance of probationary employees.¹² Yaklich testified that in providing input on the performance of probationary employees, he first discusses them with the day crew and the crew reaches a consensus, and that he then relays this conclusion to Jon Bartel.¹³ Hoagland also explained that he recommended the termination of a probationary employee after discussion

¹¹ Although Cherie Bartel testified that she believed that Yaklich and Hoagland participated in other interviews, she was unable to provide any specifics to support her assertion.

¹² Upon successful completion of the probationary period, the employee receives a wage increase, receives health care benefits, is eligible to accrue paid vacation and receives a paid uniform.

¹³ One such case involved Mark Herrera.

with the night crew.¹⁴ Yaklich testified that he believed that Cheslock and Allenbaugh also provided input on the performance of probationary employees.¹⁵

Further, Cherie Bartel testified that the Employer solicits input from Yaklich and Hoagland as to employee performance, in connection with wage increases on an employee's anniversary date, and bonuses at the end of the calendar year. However, Yaklich and Hoagland do not recommend the amount of any wage increase or bonus. Yaklich testified that in connection with a wage increase granted to employee Mark Howell, he, Cheslock and Allenbaugh were all summoned to the office and questioned about Howell's performance.

With respect to discipline, Yaklich or Hoagland have not been expressly granted the authority to terminate or discipline employees,¹⁶ and neither Yaklich nor Hoagland has ever terminated or issued written discipline to any employee.¹⁷ While they have reported incidents to upper management, their role has been limited to telling Jon or Cherie Bartel of problems of which they were aware. Thus, their role has been essentially reportorial.

Contrary to the Employer's assertions that Yaklich and Hoagland independently suspend employees, at most, they have been limited to removing employees from the workplace in extreme situations, in the event that upper management could not be contacted. On one occasion,¹⁸ Hoagland sent home an employee who he described as "freaking out" after being told that Jon Bartel wanted him to do something that he had forgotten to do the day before.¹⁹ The following day, the employee met with Cherie and Jon Bartel and Hoagland and received a

¹⁴ The employee was John Kondrich.

¹⁵ Cherie Bartel denied that she solicited such input from Cheslock and Allenbaugh, neither of whom was called to testify at the hearing.

¹⁶ At most, Cherie Bartel told them to exercise their own judgment when problems arose.

¹⁷ In one case, while Jon Bartel was on vacation, Bartel directed Yaklich to relay to an employee Bartel's decision to terminate the employee.

¹⁸ Hoagland has been in charge of the night crew for approximately four years.

¹⁹ The employee was Tim Berry. Hoagland acknowledged that Cherie Bartel told him that he had the authority to send an employee home.

one-day suspension. Thereafter, Hoagland continued to report problems with this employee, but it was not until after an incident reported to Cherie Bartel by her son, who is employed at the facility as a non-supervisory employee, that the employee was finally terminated.

In a similar fashion, Yaklich testified that on one or two occasions he has sent an employee home. Yaklich believes he has authority to send an employee home in certain extreme situations: if there is no upper management available to deal with the problem, and if the employee poses a danger to himself or to others, or if the employee refuses to work. Yaklich gave as an example “an employee throwing a rage and threatening people.” Yaklich further testified by way of example that in one instance he drove an employee home because the employee was suffering from a migraine headache and he couldn’t work around machinery.

The Employer holds weekly meetings of all staff, and monthly safety meetings for staff. At these meetings, Yaklich and Hoagland are held out by the Bartels to be in charge of their respective crews. Meetings for supervisors appear to be held on an infrequent basis, and at times, before one of the staff meetings. These supervisory meetings are attended by the Bartels, Yaklich and Hoagland, as well as by Cheslock and Allenbaugh.

Yaklich and Hoagland are paid hourly, and like the undisputed unit employees, punch a timeclock. At least one other employee on day shift earns more per hour than Yaklich does. Similarly, at least one other employee on night shift earns more per hour than Hoagland.²⁰ Yaklich and Hoagland are eligible for supervisory incentive bonuses, as are Cheslock and Allenbaugh.

Section 2(11) requires that the exercise of supervisory authority involve the use of independent judgment. Analysis of the duties and responsibilities of an individual requires that the Board determine whether that person has the authority to use independent judgment in the performance of the functions listed in Section 2(11) and to do so in the interest of management. Hydro Conduit Corporation, 254 NLRB 433, 437(1981). The exercise of some supervisory

²⁰ However, when year end bonuses are taken into account, Hoagland is the highest paid employee on his shift.

authority in a merely routine, clerical, perfunctory or sporadic manner does not confer supervisory status. Alois Box Co., Inc., 326 NLRB 1177 (1998); Chicago Metallic Corporation, 273 NLRB 1677, 1689 (1985). Further, employees who are mere conduits for relaying information between management and other employees are not statutory supervisors. Bowne of Houston, Inc., 280 NLRB 1222, 1224 (1986). In enacting Section 2(11) of the Act, Congress stressed that only persons vested with “genuine management prerogatives” should be considered supervisors, as opposed to “straw bosses, leadmen . . . and other minor supervisory employees.” Chicago Metallic Corporation, supra at 1688.

The party seeing to exclude an individual from a bargaining unit on the basis that the individual is a statutory supervisor has the burden of proving supervisory status. Alois Box Co. Inc., supra; North Shore Weeklies, Inc., 317 NLRB 1128 (1995). After careful consideration, I find that the Employer has not met its burden of establishing by competent evidence that Yaklich and Hoagland exercise sufficient independent judgment regarding any of the statutory criteria to render them supervisors within the meaning of Section 2(11) of the Act.

In support of its contention that Yaklich and Hoagland are supervisors, the Employer argues that Yaklich and Hoagland assign and transfer employees; discipline and effectively recommend discipline of employees; hire, discharge and promote employees and effectively recommend such actions; responsibly direct employees; effectively recommend rewards; and possess secondary indicia of supervisory status.²¹

Contrary to the Employer’s assertions as to the assignment and direction of work, the record reveals that the various jobs performed at the Employer’s facility, such as driving a fork truck, sorting paper and unloading trucks, require no specialized skill or training beyond on-the-job training, and at any given time, there are a limited number of employees to perform these tasks. In such circumstances, when an experienced employee, like Yaklich or Hoagland, uses

²¹ The Employer does not contend, and the evidence would not support such a contention, that Yaklich and Hoagland lay off or recall employees or adjust their grievances.

his knowledge of which employees have greater ability to perform a particular task, he is not exercising independent judgment. Further, when Yaklich substitutes for Jon Bartel, he does not exercise independent judgment in setting up the routes, but rather follows the schedule Jon Bartel has previously prepared. Moreover, while Yaklich and Hoagland are “in charge” of their respective crews, they are functioning as experienced leadmen. Accordingly, I find that Yaklich and Hoagland do not exercise supervisory authority in the assignment and direction of work or in the “transfer” of employees from one task to another. See, e.g. Carlisle Engineered Products, Inc., 330 NLRB No. 189 (2000); Ryder Truck Rental, Inc., 326 NLRB 1386, 1387 (1998); Millard Refrigeration Services, Inc., 326 NLRB 1437, 1438 (1998); Clark Machine Corporation, 308 NLRB 555, 556 (1992).

With respect to hiring, participation in the interviewing process by Yaklich, along with Cheslock, on one occasion, cannot serve to confer supervisory status on Yaklich or Hoagland. See Ryder Truck Rental, supra at 1387 fn. 9; Waverly-Cedar Falls Health Care, Inc., 297 NLRB 390, 392 (1989).

Further, while the Employer asserts that Yaklich and Hoagland, by virtue of their participation in the evaluation process, effectively recommend the hire, promotion, reward and discharge of employees, the evidence does not support this contention. Thus, as to the evaluation of the performance of employees, Jon Bartel directly supervises all of the drivers²² and is in the warehouse facility on an ongoing regular basis. Accordingly, Jon Bartel has first hand knowledge of employee performance. In these circumstances, the record does not establish that the input on performance provided by Yaklich and Hoagland constitutes an effective recommendation for personnel action without the independent determination made by Jon Bartel. Further, as to the grant of wage increases, both Cheslock and Allenbaugh, who are in the petitioned-for unit, have participated in the process. In addition, as to the retention of probationary employees, both Yaklich and Hoagland have discussed the matter with the crew

²² Jon Bartel supervises the drivers on the night shift as well as the drivers on the day shift.

members and reached a consensus as to whether the probationary employee should be retained, and relayed this group opinion to Bartel. Thus, Cheslock and Allenbaugh, as well as other petitioned-for unit employees, provide input on employee performance. Given these circumstances, it cannot be concluded that Yaklich and Hoagland participate in the evaluation process in a manner different than other employees who are admittedly included in the unit. For these reasons, I find that the record does not establish that the limited participation in the evaluation process confers supervisory status on Yaklich and Hoagland. See Ryder Truck Rental, supra at 1387 fn. 9; Passavant Health Center, 284 NLRB 887, 891 (1987).

With respect to discipline, it is clear that Yaklich and Hoagland do not possess the authority to terminate, suspend or issue written warnings to employees. The reports of incidents made by Yaklich and Hoagland to upper management are merely factual reports which do not themselves constitute discipline, and do not recommend the imposition of particular discipline. Such reports of substandard performance which do not affect the employee's status or contain effective recommendations for discipline are not evidence of supervisory authority. Carlisle Engineered Products, Inc., supra; Ryder Truck Rental, supra at 1386; Passavant Health Center, supra at 889. Moreover, removing an employee from the remainder of the shift in the circumstances present herein, such as an employee "freaking out", is not an indicium of supervisory status, because responding to conduct which obviously constitutes a violation of company policy requires no independent judgment on the part of the purported supervisor. That is, the circumstances which have caused employees to be removed from the workplace are the type of work-rule infractions that are readily or "routinely" discernible and do not require the exercise of independent judgment set forth in Section 2(11) of the Act. See, e.g., Manor West, Inc., 313 NLRB 956, 959 (1994).

The secondary indicia of supervisory status relied upon by the Employer does not render Yaklich and Hoagland supervisors. In the absence of primary indicia as enumerated in Section 2(11) of the Act, secondary indicia are insufficient to establish supervisory status. Carlisle Engineered Products, Inc., supra; SDI Operating Partners, L.P., 321 NLRB 111, 112 fn. 2

(1996). In any event, the secondary indicia relied upon do not support a finding of supervisory status. Thus, Yaklich and Hoagland punch a timeclock and are paid hourly, are not the highest paid employees on their crews, and receive the same bonus package as Cheslock and Allenbaugh, who are within the petitioned-for unit. Although Yaklich and Hoagland attend supervisory meetings, Cheslock and Allenbaugh also attend such meetings. Further, the record does not support a finding that Yaklich spends a regular and substantial portion of his working time performing supervisory tasks by substituting for Jon Bartel. In this regard, I note that if Jon Bartel is not on the workfloor, he is in his on-site office or in the Employer's administrative office located a short distance away, and that Cherie Bartel is also available at the administrative office. See Carlisle Engineered Products, Inc., supra. With specific regard to the absence of upper management on-site during the evening shift, it is clear that Jon and Cherie Bartel are available by telephone. Thus, if the drivers experience problems or have to leave early, the Bartels are contacted. For this reason, it cannot be concluded that if Hoagland is not found to be a supervisor, that the employees are unsupervised during the night shift. See Ryder Truck Rental, supra at 1387 fn. 8. Finally, contrary to the Employer's assertions, Yaklich does not regularly approve timecards or even regularly make corrections thereon and there is no assertion that Hoagland has any involvement with timecards whatsoever.

Based on the above and the record as a whole, noting particularly that in each instance the authority exercised by Yaklich and Hoagland does not involve independent judgment, but rather constitutes routine decisions typical of leadmen and other employees who are generally found by the Board not to be supervisors, I shall include Yaklich and Hoagland in the petitioned-for unit. See, e.g., Carlisle Engineered Products, Inc., supra; Ryder Truck Rental, supra; Millard Refrigeration Services, Inc., supra.

Accordingly, I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time drivers, warehousemen and working foremen employed by the Employer at its Wilmerding, Pennsylvania, facility; excluding all office clerical employees and guards, professional employees and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot will be conducted by the undersigned Regional Director among the employees in the unit set forth above at the time and place set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations.²³ Eligible to vote are those employees in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period and employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.²⁴ Those eligible shall vote whether

²³ Pursuant to Section 103.20 of the Board's Rules and Regulations, official Notices of Election shall be posted by the Employer in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. As soon as the election arrangements are finalized, the Employer will be informed when the Notices must be posted in order to comply with the posting requirement. Failure to post the Election Notices as required shall be grounds for setting aside the election whenever proper and timely objections are filed. The Board has interpreted Section 103.20(c) as requiring an employer to notify the Regional Office at least five (5) full working days prior to 12:01 a.m. of the day of the election that it has not received copies of the election notice.

²⁴ In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and

or not they desire to be represented for collective bargaining by General Teamsters, Chauffeurs and Helpers Local Union No. 249 a/w International Brotherhood of Teamsters, AFL-CIO.

Dated at Pittsburgh, Pennsylvania, this 18th day of December 2000.

Gerald Kobell
Regional Director, Region Six

NATIONAL LABOR RELATIONS BOARD
Room 1501, 1000 Liberty Avenue
Pittsburgh, PA 15222

177-8560-1000
177-8560-1500
177-8560-5000
177-8560-8000

their addresses, which may be used to communicate with them. Excelsior Underwear, Inc. 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is hereby directed that the election eligibility list, containing the full names and addresses of all eligible voters, must be filed by the Employer with the Regional Director within seven (7) days of the date of this Decision and Direction of Election. The Regional Director shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office, Room 1501, 1000 Liberty Avenue, Pittsburgh, PA 15222, on or before December 26, 2000. No extension of time to file this list may be granted, except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.